

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6081 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GEMARBHAI VASHRAMBHAI PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/02/99

ORAL JUDGEMENT

#. This petition is preferred by the petitioner to challenge the order of detention passed by the Commissioner of Police, Ahmedabad City on 18th July, 1998 detaining him under the provisions of Gujarat Prevention of Anti Social Activities Act (For short 'PASA Act') on the grounds that the petitioner is indulging in activities of bootlegging and such activities of the petitioner were prejudicial to the public order.

#. The grounds of detention indicate that about six offences under the Bombay Prohibition Act registered against the petitioner. It also indicates that two incidents dated 28th June, 1998 and 8th July, 1998 occurred, wherein the petitioner used force against the members of public to facilitate his bootlegging activities. The action under Section 93 of the Bombay Prohibition Act was also taken against the petitioner but he cared not to comply with the order and has continued his illegal activities.

#. Ms. Kachhavah, learned advocate appearing for the petitioner submitted that the petitioner is alleged to have been involved in activities are not such as which caused prejudice to the public order but at the most it would be a question of law and order situation. It is submitted that the petition may please be allowed. She has also raised the contention that the representation was made by the petitioner, was not considered by the authorities concerned on the ground that it was not signed by the petitioner, although it was sent through advocate. In this regard, she submitted that the petitioner's right under Article 21 and 22 of the Constitution of India is violated and she has placed reliance on decision of the Hon'ble Supreme Court in case of BHALCHAND CHORASIYA VS. UNION OF INDIA AIR 1978 S.C. 297.

#. Mr. Pujari, learned AGP has opposed this petition. He submitted that the petitioner has consistently involved himself in bootlegging activities and has not paid heed to ordinary law and therefore the detention order was required to be passed.

#. Keeping in light the decision of the Hon'ble Apex Court in case of PIYUSH KANTILAL MEHTA VS. COMMISSIONER OF POLICE AIR 1989 S.C. 491, it cannot be said that the activities of the petitioner were such as can be labelled as disturbing or causing prejudice to the public order. Stray incidents of beating or involvement in cases under Bombay Prohibition Act by itself cannot be considered as an activities involving disturbance to public order unless such activities are shown to be dangerous to public order or are shown to be such as might have caused alarm or panic to the members of the public at large.

#. Additionally, if the view taken by the Hon'ble Apex Court in case of BHALCHAND CHORASIYA (SUPRA) is considered, the authorities concerned is supposed to take

a liberal approach while considering the representation. In that case, the representation of the detenu was not considered by the authority only on the ground that it was not signed by the the detenu himself but by person in capacity as member of a Parliament. In the instant case, it is clear that the representation has not been considered as can be seen from the letter produced by Ms.Kachhavah. It may also be noted that the representation was sent by an advocate representing the detenu on behalf of the detenu. It was turned down by the authorities concerned only on the ground that it was not sent by the detenu himself. The order of detention therefore gets vitiated and cannot be sustained. The petition is therefore deserves to be allowed and is therefore allowed accordingly. The petitioner is ordered to be released from detention forthwith if he is not required in any other criminal case or proceedings. Rule is made absolute.

Date : 18-2-1998 (A.L.Dave, J.)

*KAILASH